

1 **RIMAC MARTIN, P.C.**
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8 Attorneys for Defendant
9 LOOKSMART LTD.

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 WEBOOST MEDIA S.R.L., a Societa a) Case No.: 3:13-cv-05304 SC
14 responsabilita limitata,)
15) **DEFENDANT'S NOTICE OF**
16 Plaintiffs,) **MOTION TO DISMISS AND FOR**
17 v.) **PARTIAL SUMMARY JUDGMENT**
18)
19 LOOKSMART LTD., a Delaware) Date: June 6, 2014
20 corporation, and DOES 1 through 100,) Time: 10:00 a.m.
21) Loc: Courtroom 1, 17th Floor
22 Defendants.)
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28)

23 NOTICE IS HEREBY GIVEN that on June 6, 2014 at 10:00 a.m. in
24 Courtroom 1, 17th Floor at 450 Golden Gate Avenue, San Francisco, CA 94102,
25 Defendant LOOKSMART LTD ("LookSmart") hereby moves pursuant to Rule
26

1 12(b)(6) and Rule 56 of the Federal Rules of Civil Procedure, for an order
2 dismissing certain claims with prejudice made against LookSmart on the grounds
3 that the economic loss rule and the contract between the parties, by its terms, limits
4 the liability of either party.

5 This Motion is made on the following grounds:

- 6 1. This lawsuit concerns a disagreement concerning a contract between the
7 parties. The contract provides in pertinent part: UNDER NO
8 CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE
9 OTHER PARTY, WHETHER IN CONTRACT, TORT OR
10 OTHERWISE, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL,
11 SPECIAL OR EXEMPLARY DAMAGES. *See* Complaint Ex. A, Pg. 2.
12 Furthermore, the contract limits the parties' liability to "THE TOTAL
13 AMOUNT PAID OR PAYABLE . . . TO LOOKSMART UNDER THIS
14 AGREEMENT."
- 15 2. In addition to the cause of action No. One for Breach of Contract,
16 Plaintiff's Complaint alleges additional causes of action against
17 LookSmart for the following:
- 18 a. Cause of Action Number Three: **Fraudulent Concealment;**
 - 19 b. Cause of Action Number Four: **Negligent Interference;**
 - 20 c. Cause of Action Number Five: **Intentional Interference with**
21 **Prospective Economic Advantage;**
 - 22 d. Cause of Action Number Six: **Intentional Interference with**
23 **Contractual Relations;** and
 - 24 e. Cause of Action Number Seven: Violation of California Business
25 and Professions Code § 17200.
- 26

1 3. Plaintiff's causes of action Three, Four, Five, Six, and Seven are,
2 pursuant to the economic loss rule and the contractual provision between
3 the parties precluding liability for "INDIRECT, INCIDENTAL,
4 CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES", are
5 precluded and subject to dismissal with prejudice.

6 4. LookSmart further moves for a partial summary judgment order limiting
7 limiting WeBoost's recovery, if any, to an amount less than or equal to
8 \$105,273.92.

9 This motion is based on this Notice of Motion, the Memorandum of Points
10 and Authorities in support of this motion, and on such other and further oral and
11 documentary evidence as may be presented at the hearing of this motion.

12 **RIMAC MARTIN, P.C.**

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14 Dated: May 2, 2014

15 By: /s/ William Reilly

16 WILLIAM REILLY

17 Attorneys for Defendant

18 LOOKSMART LTD
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1 **CERTIFICATE OF SERVICE**

2 I am employed in the County of San Francisco, State of California. I am over the
3 age of 18 and not a party to the within action. My business address is 1051 Divisadero
4 Street, San Francisco, California 94115.

5 On May 2, 2014, the following document is being filed electronically and will be
6 available for viewing and downloading from the Court's CM/ECF system:

7 ***DEFENDANT'S NOTICE OF MOTION TO DISMISS AND FOR PARTIAL***
8 ***SUMMARY JUDGMENT***

9 The Notice of Electronic Case Filing Automatically generated by the system and
10 sent to all parties entitled to service under the Federal Rules of Civil Procedure and the
11 Local Rules of the United States District Court, Northern District of California, who have
12 consented to electronic service shall constitute service of the filed document to all such
13 parties.

14 Executed on May 2, 2014 at San Francisco, California.

15 I declare under penalty of perjury that I am employed in the office of a member of
16 the bar of this Court at whose direction the service was made and that the foregoing is
17 true and correct.

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Robin A. Hale
(Type or print name)

/s/ Robin A. Hale
(Signature)